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In the

Supreme Court of the United States

In Equity

October Term, 1934

No. [redacted] Original [redacted] 3

THE STATE OF NEBRASKA,
Complainant,
vs.
THE STATE OF WYOMING,
Defendant,
and
THE STATE OF COLORADO,
Impleaded Defendant.

ANSWER AND CROSS BILL OF THE STATE OF COLORADO.

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INDEX.

	PAGE
Answer to Bill of Complaint of Nebraska	2
Answer to Cross Bill of Wyoming	12
Further Answer and Second Defense to Cross Bill of Wyoming	17
Cross Bill of Colorado	25
Prayer	48
South Platte River Compact, Exhibit "A"	51

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THE STATE OF NEBRASKA,
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vs.
THE STATE OF WYOMING,
Defendant,
and
THE STATE OF COLORADO,
Impleaded Defendant.

ANSWER AND CROSS BILL OF THE STATE OF COLORADO:

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Comes now the State of Colorado, impleaded defendant, appearing in its sovereign capacity by Paul P. Prosser, its Attorney General, and pursuant to the order of

this Court entered December 23, 1935, and subpoena issued therefrom under date of December 26, 1935, and by leave of court, files its answer herein, and sets forth its interests, and those of its appropriators, in and to the waters of the North Platte and the South Platte Rivers.

This defendant now and at all times hereafter saving to itself all in all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the Bill of Complaint contained, and to such parts of the Amended and Supplemental Answer as are in substance and effect a Cross Bill against this defendant, and for its answer to each thereof or to so much thereof as this defendant is advised is material and necessary for it to make answer, saith:

I.

For answer to the Bill of Complaint of the State of Nebraska:

1. This defendant admits the allegations contained in paragraph Second of said Bill of Complaint are substantially true, except that in this behalf this defendant avers that the drainage area of the North Platte River and its tributaries within the State of Colorado is approximately 2,077 square miles in extent;

2. And this defendant further avers that the total length of the said North Platte River from its headwaters in the State of Colorado to its confluence with the South Platte River in the State of Nebraska is 680 miles. This defendant denies that Exhibit "A" referred to in the second paragraph of the Bill of Complaint, and attached thereto, correctly and accurately shows the area either in the State of Colorado, Nebraska or Wyoming involved in this cause, or the development as in fact made in the said area so purporting to be covered by said exhibit.

3. This defendant denies the allegations in paragraph Third of the Bill of Complaint, that the drainage area of the North Platte River in Wyoming is approximately 22,400 square miles, and on the contrary avers that said drainage area is approximately 25,541 square miles. This defendant further alleges that the drainage area of the Platte River and its tributaries in the State of Nebraska is 38,552 square miles. This defendant further denies that the drainage basin of the North Platte River in the State of Nebraska between the Wyoming-Nebraska state line and Grand Island, Nebraska, is largely arid or semi-arid territory, but on the contrary avers that the alleged arid conditions prevail only in the western counties of the said State of Nebraska and that sub-humid or humid conditions prevail in the general vicinity of the City of Grand Island, Nebraska; and this defendant further denies that the period of least rainfall in a normal year in said area occurs in the months of July, August and September, and, on the contrary, avers that during each of said months the normal rainfall is more than the average monthly precipitation in that area throughout the year, and is so distributed throughout the crop growing season that more than 75 per cent of the total annual precipitation occurs during the months of April to September, inclusive.

This defendant admits that between the Nebraska-Wyoming boundary line and Grand Island, Nebraska, there are no large tributaries of the North Platte and Platte Rivers except that the South Platte River joins with the North Platte River to form the Platte River at the said City of North Platte.

In this behalf defendant avers that between said boundary line and said city there are nevertheless large contributions and accretions to the flow of said streams resulting from the precipitation on the lands of the basins of said streams and from the application of water diverted from the said streams, to the lands adjacent thereto.

4. This defendant, answering paragraph Fourth, admits that from the year 1882, and increasingly thereafter, waters have been diverted from the Platte and North Platte Rivers in Nebraska and applied to the arable lands within said drainage basin, but denies that approximately 650,000 acres of land in the said state have as appurtenant thereto water rights from said rivers, but on the contrary avers that not to exceed 450,000 acres of land in said state have actually been irrigated with water diverted from said rivers;

This defendant further avers that, as to the amount of water the appropriators or water users in the State of Nebraska would have received annually and put to beneficial uses, except for any act, or acts, upon the part of the defendant, the State of Wyoming, it is without knowledge.

This defendant further admits, with respect to the lands in said basin in the State of Nebraska situated upstream from Oshkosh, that said lands are largely dependent upon the waters of the North Platte River, and alleges as to the lands in said basin between Oshkosh and the City of North Platte the same are less dependent, and as to those lands situate downstream from said City of North Platte they are still less dependent, if dependent at all, upon the artificial application of water thereto for the production of agricultural crops.

5. This defendant answering paragraph Fifth, admits that the lands irrigated from the North Platte and Platte Rivers in Nebraska lie largely within the counties of Scottsbluff, Morrill, Garden, Keith, Lincoln, Dawson and Buffalo, but denies that practically the entire population of said counties is dependent directly or indirectly for its subsistence upon the production of crops by irrigation. This defendant further says that, as to the increase in population, as to actual and assessed valuations of land and other property, and as to crop production, and as to

allegations concerning the development of schools, public buildings, farm improvements, sugar beet factories, and with respect to the valuation of constructed irrigation works and the existence and development of the livestock industry in territory adjacent to the counties above named, it is without knowledge.

This defendant further answering, denies that the growth and development in the above referred to section of the State of Nebraska, as alleged by the complainant, is the result of the irrigation of lands in said counties, but on the contrary alleges that such growth and development are contributed to in a very large degree by the use and cultivation of non-irrigated lands.

This defendant further admits that the complainant derives a part of its revenue from taxes levied upon properties in said counties. This defendant further admits that the failure of the supply of irrigation water from said North Platte and Platte Rivers in Nebraska would result in economic loss to said state and to the inhabitants of aforesaid counties, but denies that a mere depletion of said water supply for irrigation purposes would result in any such economic loss, and in this behalf alleges that there are abundant supplies of water in said North Platte and Platte Rivers in said State of Nebraska which are now and for many years past have been available for diversion and utilization by the inhabitants in said section of said state and which, if properly conserved and utilized by said inhabitants, would be wholly adequate for all present and reasonable future needs of said area;

And in this behalf this defendant further avers that, as more fully set forth in its Cross Bill filed herewith, citizens of the State of Nebraska are at the present moment engaged in the construction of reservoirs and other irrigating works to be supplied with waters diverted from the said North Platte and Platte Rivers in Nebraska and used in the irrigation of large additional areas of land

in the counties of Phelps, Kearney and Adams, which lie in the humid, or at least sub-humid, portions of said State.

6. This defendant answering paragraph Sixth of the Bill of Complaint, admits that a series of legislative enactments and judicial decisions has incorporated into the laws of complainant, the doctrine of appropriation, but avers that such doctrine is applicable only to the arid or semi-arid sections of said state; defendant further admits that a statute was enacted in 1889 in Nebraska providing that "as between appropriations, the one first in time is first in right," and that the 1895 statutory revision contained enactments relating to the use of the natural waters of the state as found in Sections 42 and 43 thereof, as alleged in the Bill of Complaint, and that the constitution of Nebraska adopted in 1920 includes Sections 4, 5 and 6 of Article 15 as set forth in said Bill; defendant further admits that the doctrine that the waters of the natural streams are owned by the state and dedicated to the use of the public, and that the doctrine of appropriation of waters for beneficial uses, including irrigation, is and has been recognized in the arid and semi-arid parts of Nebraska for more than forty (40) years, but alleges that said doctrine has been recognized only in cases where appropriations of water for beneficial use have been made prior to the acquisition of title to riparian lands, and that the 1895 legislation made provision for appropriations to be made subsequent to that date and for the adjudication of water rights previously acquired by appropriation.

This defendant further avers that, as to whether or not since 1895 any or all permits for the appropriation of water for irrigation purposes, including the North Platte and Platte Rivers, have been made through the administrative officers of said state, or whether said officers have exercised the duties of administering such appropriations in conformity with the doctrine of priority of appropriation, it is without knowledge.

Further answering, this defendant, the State of Colorado, avers that it was admitted as one of the states of the Union in 1876, and that when admitted its constitution contained the following provisions, which ever since said date have been and now are in force and effect:

Section 5, Article 16: "The water of every natural stream, not heretofore appropriated within the State of Colorado, is hereby declared to be the property of the public, and the same is dedicated to the use of the people of the state, subject to appropriation as hereinafter provided."

Section 6, Article 16, "The right to divert the unappropriated waters of any natural stream to beneficial uses shall never be denied. Priority of appropriation shall give the better right as between those using the water for the same purpose; but when the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes shall have the preference over those claiming for any other purpose, and those using the water for agricultural purposes shall have preference over those using the same for manufacturing purposes."

This defendant further avers, that the common law doctrine of riparian rights has prevailed in the State of Nebraska since said state was admitted into the Union and now is the basic law of that state, and that the doctrine of appropriation has been recognized and is effective as a law of that state only in the arid or semi-arid portions thereof, and which portions comprise only approximately one-third of the total area of the state; that the common law riparian rule has never obtained in the State of Colorado, but on the contrary, the doctrine of appropriation with respect to the use and disposition of the waters of flowing streams has been ever since the earliest settlements within the boundaries of what is now the State of Colorado, and now is the recognized rule with respect to waters within said state.

This defendant further avers, that by reason of said difference in the rules of law which prevail in the State of Nebraska, and those which obtain in the State of Colorado with respect to appropriations of water, it would be inequitable to apportion between the states, the waters of the North Platte solely upon the doctrine prevailing in either of the states concerned, but on the contrary this defendant avers that the division and apportionment of the waters of said river should be upon the broader and more fundamental principle of equitable apportionment as determined not alone upon the doctrine of individual priorities of use, but having regard to the present uses and future needs and requirements of the beneficial users of said waters.

7. Answering paragraph Seventh of said Bill of Complaint, this defendant admits that the doctrine of appropriation has been recognized in the State of Wyoming, and in the arid and semi-arid regions of the State of Nebraska since the dates alleged in said paragraph; and defendant further admits that the legislative enactments in each of said states provides for state administration of appropriated waters.

8. Answering paragraph Eighth of said Bill of Complaint, this defendant admits the passage of the Reclamation Act therein mentioned, but avers that as to whether or not the purpose of said enactment was or is as set forth in said paragraph, it is without knowledge; defendant further admits the allegations in said paragraph as to the preparation of plans under the authority of the Reclamation Act for the "North Platte Project," that application was made to the State Engineer of Wyoming for a permit to construct said project, the granting of said permit for the Pathfinder Reservoir with the capacity and location stated in said paragraph, and admits that said reservoir was constructed and has since been operated as alleged therein.

Defendant further admits that an additional reservoir was constructed at or near Guernsey, Wyoming, at the location and of the capacity as alleged, and admits that other reservoirs have been constructed with a total capacity of approximately 77,000 acre feet as in said paragraph set forth. Defendant further admits that said Pathfinder and Guernsey Reservoirs were constructed so as to make use of the natural channel and the natural contours of the land on either side of the river bed and make use of said river channel in conducting the water when released to the points where diverted for application to the land.

Defendant further answering, admits that the United States Reclamation Act was amended in 1911 by what is known as the Warren Act, and that pursuant to the terms of said act, the United States Bureau of Reclamation has entered into certain contracts with the irrigation projects as alleged in said paragraph. Further answering this defendant avers that as to each and every other allegation in said paragraph contained, not herein specifically admitted, it is without knowledge.

9. This defendant further answering, avers that as to the matters and things set forth in paragraph Ninth of said Bill of Complaint, it is without knowledge.

10. This defendant answering paragraph Tenth of the Bill of Complaint, admits that this Court in controversies between states respecting the waters of interstate streams, has declared the rule of interstate common law to be that each of such states is entitled to an equitable apportionment of the waters of such streams.

Defendant denies that in the case of Wyoming v. Colorado, 259 U. S. 419, this Court held that in the case of two states each recognizing the rule of appropriation of waters for irrigation purposes, the respective priorities in each state will exclusively control; this defendant

on the contrary avers that, this Court in said case applied the rule of equitable apportionment of the waters of interstate streams and recognized the doctrine of priority of appropriation as bearing upon such equitable rule, and further declared as a means for giving effect to the equitable apportionment principle, it to be the duty of each state to exercise its rights in a manner so as to conserve the common water supply through the construction of reservoirs, particularly in the down stream areas of the water shed, and to be so adapted as to conserve and equalize the natural stream flow, and of so making use of the return flow as to prevent waste and to secure the largest economic and feasible use of such waters.

This defendant further admits, that complainant is entitled to an equitable apportionment of the waters of the North Platte River, but in this behalf avers that the states of Colorado and Wyoming are likewise entitled to such equitable apportionment, and, that in determining the respective apportionments to each of the states, party to this suit, the Court should take into consideration the relative requirements, and present uses, and future needs of each of said states and the appropriators within the same, and all other pertinent facts, and determine such equitable apportionment accordingly. This defendant further answering, avers that as to each and every other allegation in said paragraph contained, it is without knowledge.

11. This defendant answering paragraph Eleventh of the Bill of Complaint, admits that on or about the time alleged in said paragraph there were commenced and developed by the defendant, the State of Wyoming, and the United States Bureau of Reclamation plans for projects referred to as the Casper-Alcova and Seminoe Reservoirs, having for their purpose the irrigation of a large acreage of land in the North Platte drainage basin, which lands

are situate as alleged in said paragraph lying generally near Casper, Wyoming, and admits that plans have been developed by said parties for the construction of a dam across the channel of the North Platte River approximately twenty (20) miles south of the Pathfinder Dam to create a channel reservoir, to be known as the Seminoe Reservoir, and defendant further admits that the capacity of the two reservoirs is substantially as alleged in said paragraph. This defendant further answering, avers that, as to each and every other allegation in said paragraph contained, it is without knowledge.

12. This defendant answering paragraph Twelfth of the Bill of Complaint, admits that much of the land in the North Platte and Platte River basin is fertile and productive, and that valuable improvements have been erected thereon.

This defendant further says that as to whether or not the averments contained in said paragraph with reference to the so-called Casper-Alcova and Seminoe projects in Wyoming are true, as therein stated and set forth, it is without knowledge.

13. This defendant answering paragraph Thirteenth of said Bill of Complaint, admits that there are many acres of Nebraska lands included under the canals constructed by the United States Reclamation Bureau as a part of its North Platte Project, and admits that such lands receive their supplies of water from the Pathfinder and Guernsey Reservoirs, which are a part of the North Platte Project, and further admits that other Nebraska irrigation districts have acquired rights in said reservoirs by means of Warren Act contracts, as alleged in said paragraph. Further answering said paragraph Thirteenth, this defendant avers that as to whether any of the matters or things therein set forth, except such thereof as are in this paragraph admitted, are true, it is without knowledge.

14. This defendant avers as to whether the matters and things alleged in paragraph Fourteenth of the Bill of Complaint are matters of acute, or any, controversies between Nebraska and Wyoming appropriators, or any thereof, and as to whether many, or any, suits in law or equity are threatened which will result in a large, or any, volume of litigation or in great, or any, confusion in the administration of the waters of the North Platte River, that it is without knowledge.

II.

And for answer to such parts of the Amended and Supplemental Answer of the State of Wyoming as are in substance and effect a Cross Bill against this defendant says:

1. Answering paragraphs First to Fourteenth, inclusive, of said Amended Answer, this defendant refers to its foregoing answer to paragraphs First to Fourteenth, inclusive, of the Bill of Complaint of the State of Nebraska, and adopts same in answer to the like numbered paragraphs of said Amended Answer of the State of Wyoming; and this defendant states that it is without knowledge as to the amount of return waters which will be developed from the Casper-Alcova Project, if constructed, or as to the net consumptive use of said project as alleged in paragraph Thirteenth of the answer, or as to the effect of said project on other appropriators, as alleged in paragraph Eleventh of the answer, or otherwise.

2. Answering paragraph Sixteenth, this defendant admits that for a period of about thirty years last past measurements of the flow of the waters in the North Platte River in the vicinity of the Pathfinder Dam, and elsewhere on said stream, have been taken, and that such measurements disclose that waters have passed down the channel thereof without having been utilized for irrigation purposes, but as to each and every other allegation in said paragraph contained, this defendant is without knowledge.

3. Answering paragraph Seventeenth, this defendant admits that it is the duty of each state on an interstate stream to make reasonable use of the waters thereof so as to conserve such waters and thus prevent waste, and admits that this principle applies to the waters of the North Platte River; but in this behalf, this defendant further avers that at and along the headwaters of said stream in Colorado by reason of physical conditions obtaining in said area, and the comparative economic difficulty of constructing and maintaining storage reservoirs, any duty resting on Colorado appropriators in that behalf is far less imperative than is the duty resting upon water users along the lower reaches of said stream where, on account of the larger volume of water to be conserved and the existence of more adequate and feasible reservoir sites, the impounding of water is much more practicable from the standpoint of economy and water conservation.

As to what percentage of the water of the North Platte River originates within the State of Wyoming, and as to the percentage of the volume of water which is proposed to be diverted annually for irrigation of the lands in said proposed Casper-Alcova project which will be returned to and passed down the stream for use in eastern Wyoming and in Nebraska, this defendant is without knowledge.

4. Answering paragraph Eighteenth, this defendant admits that the North Platte is a meandering stream, and that measured by the course of its flow from its headwaters to North Platte, Nebraska, its length is approximately as alleged in said paragraph; admits that heavy rainfalls periodically occur along the length of said stream producing heavy flows of water for short periods, and that the time required for the water to reach North Platte, Nebraska, after crossing the Colorado-Wyoming state line is about as therein alleged; and admits that by reason of

said physical facts it would be difficult, if not impossible, to justly and equitably regulate the use of the waters of said river throughout its course, including its course in Colorado, strictly upon the basis of the rule of priority and with proper regard to the beneficial use of said waters.

5. Answering paragraph Nineteenth, this defendant says that as to the acreage, fertility, irrigation requirements, and expenditures made by the State of Wyoming, development and dependency of communities upon irrigation, contribution to tax revenue by irrigation development, and as to the effect of curtailment of the water supply upon property values along the North Platte River in Wyoming, and upon the live stock industry, and as to the necessity for the irrigation of lands in the vicinity of Casper, Wyoming, all as portrayed in said paragraph, it is without knowledge.

This defendant further answering paragraph Nineteenth with respect to the granting of permits to the Pathfinder Reservoir and the Interstate Canal, denies that the granting of said permits was accompanied by a provision for the irrigation of lands in the proposed Casper-Alcova project in the vicinity of Casper, Wyoming; and defendant further says that even if such an alleged informal agreement or understanding was entered into as stated by said defendant, the State of Wyoming, the terms and provisions thereof would not be binding or effective against the State of Colorado, or its appropriators, for the reason that neither said state nor its appropriators had any part in the making of said alleged agreement.

Defendant further denies that the present Casper-Alcova project is a belated, or any, execution of any original understanding between the United States and the State of Wyoming; and this defendant further alleges that said Casper-Alcova project is an entirely new and distinct

enterprise, as was recognized in granting its permits therefor with priority dates of December 1, 1931, and July 27, 1934, respectively, all as set forth in paragraph Eleventh of said Amended Answer.

6. This defendant answering paragraph Twentieth, admits that a portion of the headwaters of the North Platte River are in the State of Colorado, and admits that the waters to be apportioned in this action involve waters arising in said state, that said waters are extensive in amount, and approximating thirty (30) per cent of all the waters of said river. Defendant further admits that the respective rights of Colorado and Wyoming to the use of the waters in said river have never been determined, but in this behalf this defendant avers that the rights of the said respective states in and to the waters of the Laramie River, a tributary to the North Platte, having its source within the State of Colorado, have been and were adjudged and determined by the decree of this Court made and entered in the case of Wyoming v. Colorado, 259 U. S. 496, and as further modified by decree reported in the 260th U. S. page 1, all as more fully hereafter set forth in this defendant's Cross Bill filed herewith.

Defendant further admits that the State of Colorado, and its citizens, now contemplate and for a long time have contemplated the diversion and use in Colorado of other additional waters of the North Platte River, and avers that for many years investigations have been carried on for the purpose of determining the physical and economic feasibility of such other and additional diversions and uses, and that the aggregate effect of all such proposed and contemplated projects, if all of the same had been constructed, would have been to take from the said river an additional quantity of water approximating 250,000 acre feet per annum, but this defendant denies that it has ever threatened or contemplated the taking of any water to which the states of Wyoming and Nebraska, or either

of them, were justly entitled, and denies that at any time this defendant has contemplated or threatened a diversion of waters from the North Platte River and the use thereof in the State of Colorado in excess of its reasonable, just and equitable share of the waters of said river.

7. As to the allegations contained in paragraph Twenty-second of the Amended and Supplemental Answer of the State of Wyoming concerning the South Platte River, the State of Colorado admits that in 1923 the States of Nebraska and Colorado negotiated and executed what is called the "South Platte River Compact," between said states, which compact was duly approved by the legislature of Colorado on February 26, 1925 (See Laws of Colorado, 1925, Chapter 179, pages 529-541), and by the legislature of Nebraska on May 3, 1923 (Sess. Laws Nebraska, 1923, Chapter 125, pages 299-310), and by the Congress of the United States on March 8, 1926 (69th Congress, Session I, Chapter 46, pages 105-201); that a copy of said Compact is hereto attached, marked Exhibit "A," and hereby made a part of this answer as fully as though set out at length herein.

The State of Colorado admits that the South Platte and North Platte Rivers, by their junction near the City of North Platte, Nebraska, form the Platte River; admits that said compact distributes and apportions between Colorado and Nebraska the waters of the South Platte River; but denies that such compact was made without regard to or without providing for the supply of any waters from the South Platte River for the use of prior appropriators from the Platte River; and, on the contrary, alleges that the compact constitutes a settlement of the claims of Nebraska as against the waters of the South Platte River, on behalf of Nebraska appropriators both from the Platte River and from the South Platte River; alleges that said compact, as more fully appears from the terms thereof, and particularly from Article VII thereof, effectively and

finally apportioned the waters of the South Platte River for all purposes as between Colorado and Nebraska.

And because of these matters, the State of Colorado says that the interests of Colorado, and of its appropriators, in the waters of the South Platte River are not involved in this case.

III.

And for a further answer and second defense to that part of said Amended and Supplemental Answer as constitutes a Cross Bill with respect to the waters of the South Platte River, and in compliance with the order of this Court that this defendant respond to the prayer of the said answer by setting up its, and its appropriators', interests in the waters of the South Platte River, this defendant says:

1. That the South Platte River Valley in Colorado comprises approximately one quarter of the area of the state at the northeastern corner thereof, and consists of prairie lands varying in altitude from about 3,500 feet at the eastern line of the state up to about 6,000 feet where the prairie land touches the foothills of the mountains at the western end of the valley; and said mountains rise from 6,000 feet in a very short distance up to approximately 14,000 feet in many of the higher peaks along the westerly boundary of the valley, such higher peaks forming a part of the Continental Divide between the waters flowing toward the Atlantic and Pacific Oceans.

2. That the permanent settlement of the South Platte River Valley in Colorado began about the year 1858; that the valley is situated in a region of light rainfall and snowfall; that the average annual precipitation of most sections of the valley in Colorado runs from 12.5 inches to 15 inches; that the aridity of the climate prevents the growing of agricultural crops in most of the valley in

Colorado unless the lands can be furnished with artificial irrigation; that beginning with the first permanent settlement of the region about the year 1858 and continuing down to the present time, there has been a very extensive development by means of irrigation works in the valley; that over one-half of the population of Colorado now resides in the South Platte River Valley and many towns and cities have grown up therein.

3. That the population, according to the 1930 United States Census, in the South Platte River Valley in Colorado is as follows:

County	Population
Adams	20,245
Arapahoe	22,647
Boulder	32,456
Clear Creek	2,155
Denver	287,861
Douglas	3,498
Elbert	6,580
Jefferson	21,810
Larimer	33,137
Logan	19,946
Morgan	18,284
Park	2,052
Sedgwick	5,580
Washington	9,581
Weld	65,097
Yuma	13,613
	564,542

4. That under the laws of Colorado the state is divided into water districts for administrative purposes and that the approximate irrigated area, by water districts, in the South Platte River Valley in Colorado is as follows:

Water District	Irrigated Acres
1	150,846
2	199,170
3	267,014
4	137,931
5	81,565
6	151,060
7	104,201
8	50,490
9	18,793
23	48,000
64	146,593
	1,355,663

5. That the irrigated land in the South Platte River Valley is, in a large part, very intensively cultivated; and such irrigated land is devoted, in part, to the production of such crops as sugar beets, potatoes, garden vegetables and the like; that Colorado produces more sugar beets than any other state and the South Platte River Valley produces the largest portion of the sugar beets grown in Colorado; that the amount of sugar beets and potatoes produced in the South Platte River Valley in Colorado in 1933, by counties, was as follows:

County	Tons Sugar Beets	Bushels Potatoes
Adams	106,110	29,900
Arapahoe	5,540	1,550
Boulder	95,850	28,750
Jefferson	7,890	18,550
Larimer	202,460	79,000
Logan	237,020	149,980
Morgan	325,230	111,570
Park	00	81,000
Sedgwick	55,940	71,870
Washington	6,630	11,400
Weld	1,034,880	2,642,970
	2,077,550	3,226,540

6. That, in addition to the growing of sugar beets, potatoes and other like intensive crops, the irrigated land in the South Platte Valley in Colorado is also used for the raising of grain, native hay and alfalfa and other general crops; that large quantities of such general crops are grown in the valley; that large numbers of live stock are wintered in the valley, and many animals are fed and fattened for the market and that, in the year 1933, approximately 79,000 cattle and 955,000 sheep were so fed in the South Platte River Valley in Colorado.

7. That the production of sugar beets, potatoes and other like intensive crops requires irrigation not only in the spring and early summer but also in the maturing season of late summer and early part of the fall; that during the maturing season the water supply of the South Platte River is much smaller than during the earlier part of the year; accordingly, that the conservation of the water by means of large reservoirs is essential to the growing of these intensive crops; and that the amount of storage capacity in reservoirs now constructed in the South Platte River Valley in Colorado by water districts is approximately as follows:

Water District	Acre Feet of Storage Capacity
1	155,543
2	109,942
3	178,000
4	101,602
5	42,542
6	46,460
7	40,050
8	12,135
9	29,800
23	202,547
64	140,660
	1,059,281

8. That the water is stored in these reservoirs from the South Platte River and its tributaries during the winter months, when the ground is frozen and direct irrigation is impossible; during the spring months when the melting of the snows in the high mountains furnishes more water than is needed for direct irrigation; and during times of floods in the summer months; that the water from the reservoirs is mainly used during the latter part of the summer and early part of the fall for finishing the growing of the crops; and that without such reservoir water, most of the sugar beets, potatoes and other like crops, could not be successfully grown in the South Platte River Valley in Colorado.

9. That in addition to conserving the waters of the South Platte River and its tributaries by means of storage reservoirs, Colorado has brought into the South Platte River Valley, water from other watersheds and is continuing so to do; that such water is brought into the South Platte River Valley from other watersheds by means of transmountain diversions and the aggregate amount of the water so brought into the South Platte River Valley has been approximately 55,000 acre feet annually for many years; that at the present time a large transmountain diversion project is being finished by the City and County of Denver; that such project will be ready for the conveying of water into the South Platte River Valley during the present year 1936; that the amount of water contemplated to be brought into the South Platte Valley by means of said Denver project is more than 50,000 acre feet annually for the present; and that the plans for such project ultimately contemplate the increasing thereof to 100,000 acre feet.

10. That in addition to said Denver transmountain project now being constructed, there are other transmountain projects of large size for bringing water into the South Platte River Valley in Colorado from the Colorado

River, which other projects have been surveyed and filed upon, and plans for their completion are being prosecuted with due diligence.

11. That this development of the South Platte River Valley in Colorado by means of reservoirs and transmountain diversions has been going on for many years; that the construction of reservoirs began more than 70 years ago; most of the larger reservoirs were constructed by the year 1910; the building up of the waters of the South Platte River Valley in Colorado by means of transmountain diversions has also been going on for many years; some of the transmountain diversions have been in constant operation for over 50 years; and that this development of irrigation in the South Platte River Valley in Colorado is not a recent matter (although it is still continuing) but, on the contrary, this development has long since passed the experimental stage, and a stable and seasoned civilization founded thereon has been long established in the South Platte River Valley in Colorado.

12. That this development of the waters of the South Platte River Valley in Colorado by means of reservoirs and by transmountain diversions has been accomplished by private initiative and without aid of any federal funds, except that the Denver project above mentioned is now being aided to the extent of approximately $3,000,000 by grants from the federal government.

13. That the South Platte River is a variable stream; it varies not only from year to year, but from season to season and from day to day; that Colorado, by means of its reservoirs, transmountain diversions and the use of water in Colorado has built up the return flow of the stream and made more uniform and constant the flow of water therein; that the amount of water naturally entering the South Platte River in Colorado is approximately 1,500,000 acre feet annually on an average; and that, by means of the return and seepage waters, the accretions to

the South Platte River in Colorado average about 1,250,000 acre feet annually; that this large amount of return waters has had the effect of steadying the stream flow and rendering it more certain and dependable; and that the amount of water furnished by the stream to Nebraska is more reliable and therefore more useful because of the development of the stream in Colorado.

14. That because of the high altitude of the South Platte River Valley in Colorado, the nights even in summer are cool and, consequently, less water is required to produce a good agricultural crop than in regions of lower altitude; that the use of the waters of the South Platte River in Colorado is a use near the headwaters of a stream, and, consequently, there is a saving of the carriage loss; and that, for these and other reasons, the use of water in the South Platte River basin in Colorado is economical and the duty of water in Colorado is very high.

15. That the use in Colorado of the waters of the South Platte River is almost entirely for the furnishing of a municipal supply to towns and cities and for the furnishing of an agricultural supply for the raising of crops for human consumption; that these uses are the highest and most important uses to which the waters of a stream can be put, and are, therefore, of the greatest economic benefit to the nation.

16. That the agricultural crops can not be raised at all in most parts of the South Platte Valley in Colorado unless the land is furnished with artificial irrigation; that in this respect Colorado differs from states of more abundant rainfall where irrigation is necessary only in occasional dry years; that in the South Platte River Valley in Colorado irrigation is necessary every year and consequently the need for water for irrigation is absolute and not relative; that nearly all the population of the South Platte River Valley in Colorado is dependent on irrigation, directly or indirectly, and that without irrigation the

South Platte River Valley in Colorado would be almost depopulated instead of being, as at present, the abode of more than half a million people.

17. That there is a deficiency of water in the South Platte River Valley in Colorado to supply all of the lands now under ditch in the valley; that in addition to the lands now under ditch, there are hundreds of thousands of acres in said valley in Colorado of excellent soil for which no water supply is available; that the towns and cities in the valley are, for the most part, up to the limit of their present water supplies and need additional water supplies if they are to grow; that in the South Platte River Valley in Colorado there is a long established civilization of considerable magnitude which is still developing; that Colorado ought to have the right to go on developing and that such additional development, because of the aridity of the climate, is absolutely dependent upon the water supply not only for the agricultural lands but also for the towns and cities in the valley.

18. That the States of Colorado and Nebraska entered into what is known as the South Platte River Compact of 1923, mentioned in paragraph Twenty-second of the amended and supplemental answer of the State of Wyoming, and that said compact was duly approved by the legislatures of said respective states and by the Congress of the United States; that a copy thereof is hereto attached as Exhibit "A" and hereby made a part hereof as fully as though set out at length herein.

19. That the South Platte River Compact of 1923 between the states of Colorado and Nebraska, and particularly Article IX thereof, recognized all of these elements; that the division of the waters of the South Platte River between Colorado and Nebraska, as set out in said Compact, is an equitable apportionment of the waters of said stream; and that nothing has occurred, since said Com-

pact was negotiated, approved and confirmed, to render such division of water unfair or inequitable.

20. That said South Platte River Compact, instead of being a burden to the State of Nebraska and particularly to the appropriators of water from the Platte River, is, by reason of the matters herein alleged, and under all the circumstances, a benefit to the State of Nebraska and to the appropriators of water from the Platte River.

IV.

And now by way of Cross Bill, and for affirmative relief against the said complainant, the State of Nebraska, and the defendant, the State of Wyoming, this defendant, the State of Colorado, shows:

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

FIRST.

That the State of Colorado is one of the States of the Union of the United States of America admitted to and exercising equal sovereignty with the original and all other states, having all of the privileges, rights and powers which are possessed by or which devolve upon any state, and is charged as parens patriae with the duty of safeguarding and promoting the interests and welfare of its citizens, and with the protection of property within its territorial limits.

And that the fundamental rules of law relating to water rights in said State are more particularly set forth in Section 6 of the foregoing Answer of this impleaded defendant to the Bill of Complaint of the State of Nebraska, and which said rules of law, as so set forth, are incorporated herein by reference to said Section 6, as fully as though realleged here at length.

SECOND.

That the North Platte River has its origin in Jackson County, Colorado, in a basin or valley commonly known as North Park. The said Jackson County has a width of thirty to forty miles and a length, extending southward from the boundary line between the states of Colorado and Wyoming, of approximately fifty miles.

That the North Park basin is drained by several headwater tributaries of the North Platte River, among them being the Canadian Creek, which drains the eastern portions of the basin; Middle Fork North Platte River, formed by the confluence of Michigan Creek and Illinois Creek, which drains the central portions of North Park; and a group of tributaries including North Fork, Roaring Fork, Little Grizzly, and Big Grizzly Creeks, and Big and Encampment Creeks, which drain the western portions of the North Park basin in Jackson County.

That the lands of North Park are of high elevation, ranging from 7,800 feet up to 9,000 feet above sea level. The basin is bordered by mountains of higher elevation, including the Medicine Bow Range and the Continental Divide. Upon these higher mountains the precipitation concentrates, with the result that climatic conditions over the valley floor of the North Park basin are strictly arid. In the normal year the total precipitation upon the said lands in the valley of North Park is less than twelve inches, and during the normal summer season extending from April to September, inclusive, the rainfall is less than six inches. Under such arid conditions irrigation is continuously necessary as an aid to agricultural operations. The growing season is relatively short, averaging about 75 days per season. The streams have a heavy run-off during a period of from six to eight weeks when the mountain snows are melting and thereafter diminish rapidly to lower stages. Under such circumstances it is the practice to flood the lands heavily during high water

periods, and to apply as much water as is available up to the carrying capacities of the irrigation ditches. Under the methods of irrigation in North Park a high percentage of the water diverted from the streams finds its way back into the streams and thus becomes available for re-diversion and re-use at points farther downstream.

That irrigation began to be practiced in North Park by the early settlers in the year 1880. During the decade 1880 to 1890 the number of ditches increased rapidly, and thereafter irrigation development has been gradual until at the present time and for many years past several hundred separate ditches have been operated. All of these relatively small ditches were constructed by the individuals then owning the lands upon which the water was to be applied. Operation was largely by means of direct diversion from the numerous small streams, although a few reservoirs have been constructed with an aggregate capacity of approximately 16,000 acre feet, and some natural storage is afforded in the small lakes along and near the headwaters of the said streams.

That the aggregate diversion capacity of the several hundred ditches which divert water from the North Platte River and its tributaries in Jackson County, as adjudicated and decreed by order of the District Court of the State, approximates 6,600 cubic feet of water per second of time, and of the said total decreed capacity of all the said ditches more than seventy per cent thereof is dated prior to September 19, 1904. More than two-thirds of the total diversions of water are made by the said ditches under the said priorities having dates prior to September 19, 1904. At present the total area of the irrigated lands in Jackson County is 143,400 acres, and approximately this same amount of land has been irrigated continuously for more than thirty years.

THIRD.

That the principal crop produced in the said North Park basin is hay. Irrigation is practiced in connection with hay meadows along the streams and with the pasture lands adjoining, and is essential in that connection as a necessary part in the live stock producing industry, the principal industry of Jackson County. North Park is the permanent home of more than 35,000 cattle and of more than 35,000 sheep, together with their annual offspring. The hay crop produced by the irrigation of meadows is essential for the winter feeding of live stock, and the irrigated pasture lands are a necessary part of the said live stock operations.

That the State of Colorado is an important live stock feeding state. During the normal years approximately 140,000 cattle are fattened for market in the State of Colorado, and usually 1,500,000 lambs, are fed in the said state. The relative importance of the State of Colorado in this connection is indicated by the fact that from 25 to 35 per cent of the total number of lambs which are fattened for market in the entire United States are annually fed in the State of Colorado. Northern Colorado is the one most important of the several sections of the state in the matter of cattle and lamb feeding operations. Ordinarily 85 per cent of all the cattle on feed, and from 70 to 80 per cent of all lambs fed in the State of Colorado, are located in the northern Colorado section. Jackson County is an important contributing factor in the live stock industry of the State of Colorado and particularly of the northern section of said state.

FOURTH.

That in addition to the said diversions of water in North Park for the irrigation of meadows and pastures therein as aforesaid, other and additional quantities of water are diverted from the headwater tributaries of the

North Platte River in Jackson County, and are conveyed to the headwaters of the Cache La Poudre River, in the State of Colorado, and are used for the irrigation of lands in the said Cache La Poudre River basin. There are two ditches which accomplish the said transmountain diversions, namely: first, the Cameron Pass Ditch, which has a construction priority as of date July 30, 1882, for the diversion of 10 cubic feet of water per second of time, and a second extension priority as of date July 7, 1898, for the diversion of 18 cubic feet of water per second of time; and, second, the Michigan Ditch, which has a construction priority as of date July 10, 1902, for an amount of 121 cubic feet of water per second of time, an extension priority as of date July 7, 1904, for an amount of 48 cubic feet of water per second of time, and a second extension priority as of date September 10, 1910, for an amount of 43.75 cubic feet of water per second of time.

FIFTH.

That after supplying the water used for the irrigation of lands in North Park, including the transmountain diversions of water out of the said North Park basin, there remains in the North Platte River and its tributaries in the State of Colorado, aside from the Laramie River which is separately considered, a quantity of water and a volume of stream flow which crosses the boundary line between the states of Colorado and Wyoming and passes downstream into the State of Wyoming, that in the average year approximates 500,000 acre feet. The length of the North Platte River from the boundary line between the states of Colorado and Wyoming to the dam across the said North Platte River, which creates the Pathfinder Reservoir, approximates 180 miles, and the drainage area in the State of Wyoming which is tributary to the said section of the North Platte River approximates 12,500 square miles. Along the said section of the North Platte River and its tributaries in the State of Wyoming there is

now being irrigated a total of approximately 180,000 acres of land, with water diverted from the said section of the North Platte River and its tributaries in the said state. After having furnished the water for the irrigation of said lands in Wyoming there remains in the North Platte River a quantity of water and a volume of stream flow, as measured out of the said Pathfinder Reservoir, in excess of 1,300,000 acre feet of water in the average year.

That the said Pathfinder Reservoir is a part of a project known as "The North Platte Project," constructed by the United States Department of Interior, Bureau of Reclamation, under authority of an Act of Congress passed in the year 1902, known as the "Reclamation Act." The Secretary of the Interior of the United States on December 6, 1904, made application to the State Engineer of Wyoming for permission to construct the said North Platte Project and the said Pathfinder Reservoir, a part thereof, which said application was granted by the said State Engineer and the said "The North Platte Project" was assigned a priority date as of December 6, 1904. Included in the said application was a right to store water in the said Pathfinder Reservoir in the amount of 1,070,000 acre feet, and proceeding under the said application and permit, the said Pathfinder Reservoir was constructed and completed in the month of June, 1909, since which time it has been operated by the United States Department of Interior, Bureau of Reclamation.

That another reservoir was subsequently constructed and completed in the month of July, 1927, at Guernsey, Wyoming; at a point approximately 200 miles downstream from the said Pathfinder Reservoir. The said Guernsey Reservoir has a storage capacity of approximately 71,000 acre feet of water.

That along the North Platte River between the Pathfinder Reservoir and the Guernsey Reservoir quantities of water are received by the North Platte River from its

several tributaries in the said section of river, which together drain an area in excess of 5,000 square miles. Along the said section of river and its tributaries approximately 88,000 acres of land are irrigated in the State of Wyoming, and after supplying the water for the irrigation of such lands, together with all other lands located above the Pathfinder Reservoir in the State of Wyoming, and together with all the diversions and uses of water from the North Platte River in Jackson County, Colorado, there remains in the said North Platte River a quantity of water and a volume of stream flow which in the average year is in excess of 1,600,000 acre feet of water, as measured and recorded at Guernsey, Wyoming.

That a few miles below the Guernsey Reservoir are the headworks and points of diversion of the principal canals of the said "The North Platte Project," namely, the Interstate Canal which irrigates approximately 120,000 acres of land, most of which is located in the State of Nebraska, and on the north side of the said North Platte River; and the Fort Laramie Canal which irrigates more than 90,000 acres of land, some in Wyoming but mostly in the State of Nebraska on the south side of the said North Platte River. Additional diversions are made for the North Port Canal which irrigates approximately 16,000 acres of land in the State of Nebraska; thus making a total of approximately 230,000 acres of irrigated land under the said "The North Platte Project."

In addition to the said Pathfinder and Guernsey Reservoirs, the said the North Platte Project includes Lake Minatare, a storage reservoir of 60,000 acre feet capacity, and Lake Alice, a storage reservoir of 11,000 acre feet capacity, both supplied through the said Interstate Canal. The said reservoirs Lake Minatare and Lake Alice are located in the State of Nebraska, and are the only reservoirs of substantial capacity in the said State of Nebraska heretofore constructed for the purpose of storing the

waters of the North Platte River and the main Platte River in said State.

That under an amendment to the United States Reclamation Act passed in the year 1911, known as the "Warren Act," the United States through its Department of the Interior, Bureau of Reclamation, entered into contracts with a number of irrigation projects, located along the North Platte River and principally in the State of Nebraska, for the furnishing of an aggregate quantity of water, approximating 345,000 acre feet per season, for the irrigation of lands not originally included within the said "The North Platte Project." The said contracts are dated not earlier than the year 1912, and some are of more recent date as late as the year 1920, and since the dates thereof water has been delivered each season to the said irrigation project by the said "The North Platte Project" to the lands as provided in the said Warren Act contracts.

SIXTH.

That the Laramie River, a tributary of the North Platte, originates in the State of Colorado and has its confluence with the North Platte River in eastern Wyoming below the Guernsey Reservoir. The waters of the Laramie River are claimed for the irrigation of approximately 4,250 acres of land located in the State of Colorado, and additional quantities approximating 38,000 acre feet per season are diverted from the said Laramie River basin in Colorado for the use and benefit of lands along the Cache La Poudre River in Colorado. After such diversions and uses are accomplished there remains in the said Laramie River a quantity of water and a volume of stream flow which, in the average year, approximates 150,000 acre feet, which quantity of water and volume of stream flow leaves the State of Colorado and enters the State of Wyoming. In the State of Wyoming the said stream flow is augmented by contributions received from

tributaries of the Laramie River in said state, and the said flow of the Laramie River and its tributaries is used for the irrigation of approximately 188,000 acres of land in the said State of Wyoming.

That on May 29, 1911, the State of Wyoming, the defendant herein, filed an original proceeding in equity in this honorable Court against the State of Colorado; that this Court, upon the pleadings and proof taken in said cause, did on June 5, 1922, render its opinion and entered its decree, which is reported in the 259th U. S. Reports, at page 496, and thereafter, on October 9, 1922, entered its modified decree, which is reported in the 260th U. S. Reports, at page 1. That this honorable Court by said decree apportioned, declared and adjudged the rights of the State of Wyoming and this impleaded defendant in and to the waters of said Laramie River, as was fully set out in said report, to which reference is hereby made. That by the terms of said decree, all the waters of the said Laramie River were and are fully and completely divided and apportioned between said defendant, the State of Wyoming, and this impleaded defendant, the State of Colorado.

SEVENTH.

That below the point of diversion of the Interstate Canal and the Fort Laramie Canal of the aforesaid "The North Platte Project," there remains in the North Platte River, after the said diversions of the Interstate and Fort Laramie Canals have been accomplished a quantity of water and a volume of stream flow which in the average year approximates 1,000,000 acre feet. This said volume of stream flow is further augmented by tributary contributions, including those made by the Laramie River in the State of Wyoming, and similar though smaller tributaries in the State of Nebraska, and is further augmented by quantities of water reaching the said North Platte

River as a result of precipitation upon the lands within the basin of the said North Platte River, and by return flows resulting from irrigation of lands with water diverted from the said North Platte River. From Guernsey, Wyoming, to the City of North Platte, Nebraska, the distance by way of the North Platte River approximates 245 miles, and the drainage area tributary to this section of the North Platte River is in excess of 14,400 square miles. The aggregate area of the lands irrigated along the said section of the North Platte between Guernsey, Wyoming, and the City of North Platte, Nebraska, with water diverted from the said North Platte River and its tributaries, exclusive of the lands irrigated from the said Laramie River, approximate 380,000 acres, a large proportion of which area is located in the State of Nebraska. After all of the said diversions of water from the North Platte River have been made and accomplished for the irrigation of the aforesaid lands, there remains in the said North Platte River at the City of North Platte, Nebraska, a quantity of water and a volume of stream flow which, in the average year, is in excess of 2,000,000 acre feet.

EIGHTH.

That eastward from the City of North Platte, Nebraska, along the main Platte River down to the general vicinity of the City of Grand Island, the extent of the lands heretofore irrigated has not exceeded 110,000 acres. Along the said main Platte River from the vicinity of the City of Grand Island down to the confluence of the said Platte River with the Missouri River at or near Plattsmouth, on the eastern border of the said State of Nebraska, the extent of irrigated lands has not heretofore exceeded 1,000 acres. That the contributions of the North Platte River to the main Platte River at or near the City of North Platte, Nebraska, amounting in the average year as aforesaid to more than 2,000,000 acre feet of water, are

augmented by tributary contributions to such an extent that the quantity of water and volume of stream flow in the said main Platte River at or near the City of Grand Island approximates 2,400,000 acre feet of water in the average year.

NINTH.

That contrary to the fundamental principles of reclamation by means of irrigation, and in violation of public interests in the water resources of the Platte River, large quantities of water, to-wit, in excess of 2,000,000 acre feet normally flowing in the North Platte and main Platte Rivers in the State of Nebraska have heretofore been and are now being permitted to go to waste; and that the said wasted stream flows have served no beneficial purpose.

That the said quantities of water and volumes of stream flow in the said main Platte River are now and for many years last past have been, greatly in excess of the needs of the appropriators along said river, and greatly in excess of the volumes of water which said appropriators could put to beneficial use, even though said appropriators had constructed and operated storage reservoirs wherein to impound said quantities of water and volumes of stream flow. That defendant further alleges that the duty of constructing and operating said reservoirs does now, and at all times previous to the present, has rested upon the said appropriators in the State of Nebraska who might desire or need to use the waters of said river, or who might assert a claim thereto.

TENTH.

That within the Platte River basin there is a wide range of topographical, geological, climatological, and other natural conditions, and these different conditions give rise to variations in agricultural practices and create differences in the nature and extent of the needs for irrigation

as an aid to agricultural operations, including the growing of live stock. Included within the large area and great length of the Platte River drainage basin are climatic zones ranging from strictly arid conditions in the western portions of the basin to typically humid conditions in the eastern portion thereof.

That the States of Colorado and Wyoming are in the arid regions. The normal precipitation and the quantity of rainfall which usually occurs during the six months period from April to September, inclusive, at several stations located along the North Platte River in said States of Colorado and Wyoming are shown in the following tabulation (quantities in inches):

Station	County	State	Precipitation (Annual)	Rainfall Apr.-Sep. Inc.
Spicer	Jackson	Colorado	11.06	5.90
Saratoga	Carbon	Wyoming	11.93	6.79
Pathfinder	Natrona	Wyoming	10.21	7.10
Casper	Natrona	Wyoming	15.32	9.54
Douglas	Converse	Wyoming	14.43	10.17
Fort Laramie	Goshen	Wyoming	13.04	9.74

That in the arid regions of Colorado and Wyoming and under natural rainfall conditions as above indicated, the practice of irrigation is continuously needful, and is a necessary factor in the reclamation and occupation of such regions, the lands of which, without irrigation, would remain largely unproductive and unoccupied.

That the amount of the annual precipitation increases to the eastward, and in the State of Nebraska increases from approximately 16 to 18 inches at the western boundary of the said state, to approximately 24 to 34 inches at the eastern boundary thereof. Along the North Platte and main Platte Rivers in the said State of Nebraska, the amount of the normal annual precipitation and the quantity of the usual rainfall during the six months

period, April to September, inclusive, are approximately as indicated in the following station records:

Stations in Nebraska	County	Precipitation (Annual)	Rainfall Apr.-Sep. Inc.
Stations along North Platte River			
Mitchell	Scottsbluff	15.46	12.82
Bridgeport	Morrill	16.58	12.69
Oshkosh	Garden	19.16	15.19
North Platte	Lincoln	18.39	14.54
Stations along main Platte River			
Lexington	Dawson	22.58	16.92
Kearney	Buffalo	24.97	19.61
Grand Island	Hall	27.36	20.85
Central City	Merrick	26.08	20.53
Columbus	Platte	26.97	20.86
Omaha (near)	Douglas	27.80	20.64

That the lands of the State of Nebraska are divided by natural climatic conditions into three more or less well defined climatic zones, the boundaries of which are not exactly or permanently established, but which tend to shift from season to season, with variations in climatic conditions. This defendant alleges that the type of irrigation and the extent to which it is practiced or needful is governed by conditions peculiar to the different sections within each of the said climatic zones; that the State of Nebraska is one of the sub-humid states; that strictly arid conditions, if they prevail at all in said state, are limited to the western counties thereof; and that in the said western Nebraska counties along the North Platte River the normal annual precipitation ranges from 15 to 19 inches, as compared to precipitations ranging from 10 to 15 inches at stations along said river in the States of Wyoming and Colorado; and that in the said western Nebraska counties along the North Platte River the sea-

sonal rainfall occurring during the months of April to September, inclusive, ranges from 12 to 15 inches, as compared to seasonal rainfalls of from 6 to 10 inches at stations along said river in the States of Wyoming and Colorado.

That the said humid zone in the State of Nebraska embraces all of the eastern and central portions of said state along the basin of the main Platte River from its confluence with the Missouri River on the eastern boundary of said state, to the general vicinity of the City of Grand Island; that in the said humid zone the natural precipitation ordinarily is sufficient in amount, and ordinarily is so favorably distributed throughout the year, that crop diversification and excellent crop yields are possible without the aid of irrigation; that while drouths periodically visit most of the agricultural lands of all humid regions in the United States, including those of the State of Nebraska, and while the artificial application of water to drouth stricken lands admittedly would increase the yield of crops grown thereon at such times, still this defendant alleges that irrigation on any scale worthy of note has neither been required nor commonly practiced heretofore in the said humid zone of the State of Nebraska.

That the necessity for irrigation as an aid to agriculture in the sub-humid zone of the State of Nebraska varies largely from year to year and between cycles of years; that in the sub-humid zone, extending commonly from the said general vicinity of the City of Grand Island westward toward the said arid or semi-arid counties along the North Platte River in western Nebraska, so-called dry farming, or agriculture without the aid of irrigation, is generally practiced with such success that the tendency of the owners of land along and adjoining the main Platte River in said section has heretofore been to avoid the extra work and additional expense incidental to irrigation

farming, even at an acknowledged sacrifice of crop yields in some seasons, in the hope that each coming season will prove favorable and the funds not expended for irrigation will represent an additional margin of profit.

That the said described natural conditions and needs for irrigation create fundamental differences in the character of the claims of the State of Nebraska in and to the flow of the said North Platte and main Platte Rivers alleged by the complainant to be appurtenant to the lands along and adjoining the said main Platte River, as compared to the claims in and to the waters of the said North Platte River which have been created in the more arid regions of the States of Wyoming and Colorado.

ELEVENTH.

That in connection with the agricultural lands situated along the main Platte River in the State of Nebraska, attempts have been made heretofore, and from time to time, to provide for the irrigation of some of said lands, and particularly have such schemes been conceived and such projects initiated during periods of drouth; that many of said schemes and projects have subsequently been abandoned, wholly or in part, when climatic conditions returned to normal, without having attained a stage of effective operation, and, thereafter, upon encountering another period or cycle of drouth, some of the same schemes have been revived and some of the old projects have been rehabilitated; that during recent years, as the result of a cycle of years of deficient precipitation, and for other reasons, there has been a revival of interest among the citizens of the State of Nebraska in the matter of irrigation of said lands along the said main Platte River; that at the present time an extensive development program is proposed by the said citizens, and is now in part under way, which said program involves, among other things, the construction of a number of storage reservoirs, the providing of regulated supplies of water to be taken

from the said North Platte and Platte rivers for the irrigation of the said lands which in previous years have been partially and intermittently irrigated, and in addition thereto, the program contemplates the irrigation of vast areas of lands located principally in the Counties of Phelps, Kearney and Adams, in said state, and in the humid or sub-humid portions thereof, which said lands have not heretofore been irrigated.

That the said program is going forward and construction work is proceeding with funds of the federal government, to be repaid, at least in part, by the profits from the sale of electric energy proposed to be generated by the diversion and use of water from said North Platte and Platte Rivers in said state.

That the said present and contemplated plan of irrigating vast areas of land not previously irrigated establishes the fact that the said citizens of the State of Nebraska have heretofore known of the existence, as herein alleged by this defendant, of large quantities of unused water and large volumes of surplus stream flow in the said North Platte and Platte Rivers in said state; and further, that the claims upon the waters of the said North Platte and Platte Rivers now sought to be asserted by the said State of Nebraska are of such inherently different character as to be not properly comparable with the claims of the citizens of the State of Colorado in and to portions of the same waters of the said North Platte River.

TWELFTH.

That the said flow of the North Platte River in Nebraska and the said surplus and unused quantities of water in said river, originate in part in Jackson County, Colorado; that Jackson County is separated from the State of Nebraska by a long distance, to-wit, not less than 430 miles measured along the course of the North Platte

River as the same flows through the State of Wyoming; that the time required for water to reach Nebraska after it leaves Jackson County is variable according to the volume of the stream flow and at times is as much as two or three weeks; that climatic conditions, and particularly the occasional rainstorms which visit the region traversed by the intervening stretch of the said North Platte River and drained by its tributaries, create wide variations in the flow of said river; that other climatic conditions, including changes in temperature, wind movement and rates of evaporation, cause profound changes in the volumes of said stream flow from day to day and as between night and day; and that the said climatic conditions and changes therein cannot be forecast with certainty nor accurately anticipated over the periods of times as aforesaid.

That by reason of the said physical circumstances and climatic conditions, the distribution of the water of the North Platte River as between individual appropriators in Jackson County, and individual appropriators in Nebraska, upon a single schedule containing the priority dates and amounts assigned to each appropriator, including those in Wyoming, would further augment the said surplus and unused quantities of water flowing in said river in Nebraska, and would further increase the lost and wasted portions thereof.

That the distribution of the water as between the groups of appropriators in Jackson County and groups of appropriators in Nebraska upon the basis of a schedule of deliveries of water at the interstate line between the States of Wyoming and Nebraska, would likewise and for the same said physical circumstances and unforeseen climatic changes, increase the volumes of water now being wasted in the State of Nebraska.

That the right of the State of Colorado to provide for its future needs and insure the future prosperity of its

citizens through the use and development of surplus and unused volumes of water in the said North Platte River, by this action now sought to be apportioned, as between the States of Nebraska, Wyoming and Colorado, is a right equal to and no different from the rights of the other said states.

THIRTEENTH.

That acting under plans recently adopted by the State of Wyoming and the United States Department of the Interior, Bureau of Reclamation, there is now being constructed a dam across the North Platte River in said State of Wyoming, known as the Seminoe Dam, located above and upstream from the said previously constructed Pathfinder Reservoir; that the capacity of the reservoir created by the construction of the said Seminoe Dam is substantially 1,000,000 acre feet; that the waters proposed to be impounded therein are the present unused and surplus volumes flowing in the said North Platte River, or so much thereof as are surpluses available for capture and storage at that point, and particularly those volumes of stream flow which occur during years and seasons of high precipitation; that the said proposed Seminoe Reservoir is being constructed as a federal project, differing in this respect from other projects constructed by the said Bureau of Reclamation, in that the funds are being advanced wholly by the federal government without any obligation upon the part of anyone to repay the said cost of constructing the said proposed reservoir.

Defendant says that as a matter of equity, a fair and reasonable proportion of the benefits accruing and to accrue by reason of the construction of the said proposed Seminoe Reservoir should be allocated to the State of Colorado.

FOURTEENTH.

That plans recently have been developed by the State of Wyoming, and the United States Department of the Interior, Bureau of Reclamation, for the construction of an irrigation project known as the Casper-Alcova Project; that the lands proposed to be irrigated under and by the said project include many thousands of acres of lands located in the State of Wyoming and in the vicinity of the City of Casper; that the water supplies proposed to be utilized for the irrigation of the said lands are to be derived from the North Platte River, and particularly those supplies of water proposed to be made available by reason of the construction of the aforesaid Seminoe Reservoir; that the cost of constructing the said Casper-Alcova Project is to be paid out of funds of the federal government, while the said lands to be irrigated near the City of Casper are obligated to repay only approximately one-third of the said total cost of said project.

That the effect of such a program, if fully executed as now contemplated, will be that the State of Wyoming will derive substantially all of the benefits arising out of the existence of said surplus supplies of water flowing in the said North Platte River. And by reason of the aforesaid financial plans and arrangements as between the State of Wyoming and the United States Department of the Interior, an unequal status is being created as between citizens of the State of Colorado and citizens of the State of Wyoming, and as between appropriators of water from the North Platte River in the State of Colorado and those from the said river in the State of Wyoming; and says that unless prevented by order of this Court, an unfair and unreasonably large share of the benefits arising from the flow of the North Platte River will have been allocated to and reserved for the State of Wyoming, to the injury of the State of Colorado.

FIFTEENTH.

That the rights of the States of Colorado and Wyoming, and of the citizens of each of said states, in and to the waters of the North Platte River, except the Laramie River, have never been determined; that the State of Colorado has for many years planned the diversion of other and additional quantities of water from the said North Platte River and the use thereof in the State of Colorado; that said state has for many years carried on engineering studies and investigations for the purpose of determining the physical and economic feasibility of the said contemplated projects, and has year by year similarly studied the question of the availability of water supplies in the said North Platte River for the said diversion and use as contemplated; and defendant further alleges that the amount of the said water supply available for appropriation in the State of Colorado was not less than 250,000 acre feet per annum, and that the aggregate effect of all of the said contemplated projects, if the same had been constructed and operated, would have been to take from the said North Platte River a quantity of water approximating 250,000 acre feet per annum.

That there are in Jackson County, Colorado, at least 100,000 acres of land, not heretofore irrigated, which are now almost, if not entirely, unproductive, but which are susceptible of irrigation by water taken from the North Platte River and its several tributaries in the said Jackson County; that the said 100,000 acres of land, if so irrigated, would become and remain of great value as pasture and meadow land; that the irrigation of the said additional 100,000 acres of land will be and is necessary to the future growth, development, and prosperity of the said Jackson County; and defendant further avers that the irrigation of the said additional lands will not only greatly enhance the value thereof but will largely increase the value and utility of the lands within said Jackson

County that are now being irrigated; and defendant further avers that included within its aforesaid contemplated projects, and in addition to the development by irrigation of the aforesaid 100,000 acres of land in Jackson County, it has surveyed and otherwise investigated the physical and economic feasibility of diverting other and additional quantities of water from the said North Platte River, and its tributaries in Jackson County, and using the same upon the lands now being irrigated in the basin of the Cache La Poudre River as a supplementary supply of water for the said lands, and alleges that by reason of a deficiency in the water supply of the said Cache La Poudre River there is great need for supplemental supplies of water in said basin.

SIXTEENTH.

That some of the aforesaid projects under which the State of Colorado, and its citizens, contemplated the diversion of other and additional quantities of water from the North Platte River and its tributaries in Jackson County were duly initiated under the laws of the State of Colorado, and would have been constructed and would now be in practical operation, except for the refusals of the Secretary of the Department of the Interior to grant rights of way over public lands for the said initiated projects, and refusal to approve water rights junior to 1904 used in connection with final proof on desert land entries; that the said refusals of the Secretary of the Interior began shortly after the construction of the federal "The North Platte Project" and Pathfinder Reservoir, a part thereof; that the said refusals were based upon an alleged fear of encroaching upon a water supply claimed by the said Secretary of the Interior for its Pathfinder Reservoir; that defendant has heretofore repeatedly urged and demonstrated from engineering studies and investigations that no such fear was justified, but on the other hand that a surplus and unappropriated supply

of water existed in the said North Platte River after reasonable needs of the said "The North Platte Project" and its Pathfinder Reservoir, had been fully satisfied; that the said surplus and unappropriated supply of water existed during the years when the aforesaid initiated projects in Colorado filed their several applications for rights of way over the public lands, and defendant alleges that the said surplus and unappropriated supply of water available at said times for appropriation by the said projects initiated in Colorado was in fact appropriated by them.

That the aforesaid surplus and unappropriated supply of water is now proposed to be utilized by the Department of the Interior, Bureau of Reclamation, as the water supply basis for its proposed Seminoe Reservoir and Casper-Alcova Irrigation projects; and defendant alleges by the various acts of the Secretaries of the Department of Interior in refusing as aforesaid to approve the projects initiated in the State of Colorado, the said surplus supply of water has been unfairly and unjustly attempted to be reserved for the sole benefit of the State of Wyoming and to the injury of the State of Colorado.

SEVENTEENTH.

That defendant has repeatedly attempted, by compact negotiations and otherwise, to arrive at a reasonable basis of division of the aforesaid surplus supply of water, as between the States of Colorado and Wyoming, and as between the State of Colorado and the States of Wyoming and Nebraska, but when it appeared that no such amicable agreement could then be reached, and on the contrary that each of the said States of Wyoming and Nebraska was proceeding in its attempt to initiate claims upon the waters of the North Platte River so large in extent as to unduly encroach upon the remaining surplus supplies of water in said river, the State of Colorado was forced to protest, and did so protest, to the Secretary of the De-

partment of the Interior and other federal authorities, against the construction of the recently proposed projects in the said States of Nebraska and Wyoming, with funds supplied, wholly or in part, by the federal government, unless and until a fair and reasonable share of the said surplus supply of water in the North Platte River shall have been allocated to the State of Colorado for the benefit of its citizens.

That as a result of said protests by this defendant, it was admitted by the public officials of the State of Wyoming, that Colorado and its citizens were entitled to a reasonable proportion of the said surplus waters of the North Platte River and its tributaries; and the granting of the permits under which the Casper-Alcova Project and Seminoe Reservoir are now being constructed was based upon such admissions and understanding as to the right of this defendant and its citizens to make additional use of the said surplus waters; and this defendant further alleges that when application was made for federal funds for the construction of said Casper-Alcova Project and Seminoe Reservoir, this defendant again protested against granting of such federal funds unless the right of this defendant and its citizens to an equitable part of said surplus waters was admitted; and thereupon the State of Wyoming by its public officials and other responsible official spokesmen admitted such right and such admission was a part of the basis upon which federal funds were allocated for such construction.

That the aggregate effect upon the flow of the North Platte River of the said projects, with rights heretofore duly initiated by Colorado appropriators, in and to the waters of the said river, if the same in the normal course of events had been constructed, would have been to take other and additional quantities of water out of the said river, amounting to 100,000 acre feet per annum and that the said initiated rights should be recognized and apportioned as being senior and superior to the claims of the

recently proposed Casper-Alcova project; and defendant further alleges that its right to provide for its future and for the future well-being and prosperity of its citizens out of the surplus waters of the North Platte River, to become available by reason of the construction of the said Seminoe Reservoir is a right equal, and not inferior to, the right of the State of Wyoming to provide for its future development by the construction of the said Casper-Alcova project and other recently conceived projects within the said state, the water supplies for which are proposed to be taken from the said North Platte River and its tributaries in the State of Wyoming.

That all of the recently initiated proposals for the use of water from the North Platte River in Wyoming and Nebraska have been made with full knowledge of the aforementioned claims of Colorado to the use of water from the North Platte River.

EIGHTEENTH.

That the State of Colorado offers to do full and complete equity with the State of Nebraska and the State of Wyoming with respect to all the matters and things herein alleged concerning the equitable apportionment of the waters of the North Platte River.

WHEREFORE, this impleaded defendant, the State of Colorado, prays:

First: That the said complainant, the State of Nebraska, and the said defendant, the State of Wyoming, take nothing under their bill and cross bill, or either thereof, with respect to the waters of the South Platte River;

Second: That the said complainant, the State of Nebraska, and the defendant, the State of Wyoming, take nothing under their bill and cross bill, or either thereof, with respect to the waters of the Laramie River;

Third: That appropriate process issue against the complainant, the State of Nebraska, and the defendant, the State of Wyoming, requiring each to make answer to the cross bill herein as to the waters of the North Platte River;

Fourth: That upon the final hearing this court order, adjudge and decree that the appropriations heretofore made by users of the waters of said North Platte River in the State of Colorado be confirmed and quieted in said state and its said appropriators as a part of the equitable share of said state in the waters of said river;

Fifth: And that the Court further find and determine the equitable share and apportionment of the waters of the North Platte River, except the waters of its tributary, the Laramie River, to which the States of Colorado, Nebraska and Wyoming, with their respective appropriators, are entitled, and that the prayer of the complainant, the State of Nebraska, and of the defendant, the State of Wyoming, be denied, except to the extent that this impleaded defendant, the State of Colorado, has joined therein;

Sixth: And this defendant prays for such further, other and different relief as to the Court may seem just and equitable.

THE STATE OF COLORADO, Impleaded Defendant,

By: PAUL P. PROSSER,
Attorney General of the State of Colorado,
SHRADER P. HOWELL,
CHARLES ROACH,
Assistant Attorneys General,
Solicitors for the Impleaded Defendant.

GEO. J. BAILEY,
JOHN M. BOYLE,
WM. R. KELLY,
MALCOLM LINDSEY,
H. S. SHERMAN,
STOTEN R. STEPHENSON,
L. R. TEMPLE,
CHAS. D. TODD,
THOS J. WARREN,
Of Counsel.

STATE OF COLORADO,
CITY AND COUNTY OF DENVER } ss.

PAUL P. PROSSER, being first duly sworn upon his oath, deposes and says:

That he is the duly elected, qualified and acting Attorney General of the State of Colorado; that as such Attorney General he is the duly authorized solicitor and representative of the defendant named in the foregoing Answer and Cross Bill; that he has read the said Answer and Cross Bill, knows the contents thereof, and that the facts therein set forth are true, except those averred upon information and belief and that as to those facts, affiant verily believes the same to be true.

(signed) PAUL P. PROSSER.

Subscribed and sworn to before me this 29th day of April, A. D. 1936.

My Commission expires August 7, 1938.

(signed) ELIZABETH D. PATTEN,
(Notarial Seal) Notary Public.

EXHIBIT "A."

"SOUTH PLATTE RIVER COMPACT BETWEEN THE STATES OF COLORADO AND NEBRASKA

"The State of Colorado and the State of Nebraska, desiring to remove all causes of present and future controversy between said States, and between citizens of one against citizens of the other, with respect to the waters of the South Platte River, and being moved by considerations of interstate comity, have resolved to conclude a compact for these purposes and, through their respective Governors, have named as their commissions:

"Delph E. Carpenter, for the State of Colorado; and Robert H. Willis, for the State of Nebraska; who have agreed upon the following articles:

"Article I.

"In this compact:

"1. The State of Colorado and the State of Nebraska are designated, respectively, as 'Colorado' and 'Nebraska.'

"2. The provisions hereof respecting each signatory State, shall include and bind its citizens and corporations and all others engaged or interested in the diversion and use of the waters of the South Platte River in that State.

"3. The term 'Upper Section' means that part of the South Platte River in the State of Colorado above and Westerly from the west boundary of Washington County, Colorado.

"4. The term 'Lower Section' means that part of the South Platte River in the State of Colorado between the west boundary of Washington County and the intersection of said river with the boundary line common to the signatory States.

"5. The term 'Interstate Station' means that stream gaging station described in Article II.

"6. The term 'flow of the river' at the Interstate Station means the measured flow of the river at said station plus all increment to said flow entering the river between the Interstate Station and the diversion works of the Western Irrigation District in Nebraska.

"Article II.

"1. Colorado and Nebraska, at their joint expense, shall maintain a stream gaging station upon the South Platte River at the river bridge near the town of Julesburg, Colorado, or at a convenient point between said bridge and the diversion works of the canal of the Western Irrigation District in Nebraska, for the purpose of ascertaining and recording the amount of water flowing in said river from Colorado into Nebraska and to said Diversion works at all times between the first day of April and the fifteenth day of October of each year. The location of said station may be changed from year to year as the river channels and water flow conditions of the river may require.

"2. The State Engineer of Colorado and the Secretary of the Department of Public Works of Nebraska shall make provision for the cooperative gaging at and the details of Operation of said station and for the exchange and publication of records and data. Said state officials shall ascertain the rate of flow of the South Platte River through the Lower Section in Colorado and the time required for increases or decreases of flow, at points within said Lower Section to reach the Interstate Station. In carrying out the provisions of Article IV of this compact, Colorado shall always be allowed sufficient time for any increase in flow (less permissible diversions) to pass down the river and be recorded at the Interstate Station.

"Article III.

"The waters of Lodgepole Creek, a tributary of the South Platte River flowing through Nebraska and entering said river within Colorado, hereafter shall be divided and apportioned between the signatory States as follows:

"1. The point of division of the waters of Lodgepole Creek shall be located on said creek two miles north of the boundary line common to the signatory states.

"2. Nebraska shall have the full and unmolested use and benefit of all waters flowing in Lodgepole Creek above the point of diversion and Colorado waives all present and future claims to the use of said waters. Colorado shall have the exclusive use and benefit of all waters flowing at or below the point of diversion.

"3. Nebraska may use the channel of Lodgepole Creek below the point of division and the channel of the South Platte River between the mouth of Lodgepole Creek and the Interstate Station, for the carriage of any waters of Lodgepole Creek which may be stored in Nebraska above the point of division and which Nebraska may desire to deliver to ditches from the South Platte River in Nebraska, and any such waters so carried shall be free from interference by diversions in Colorado and shall not be included as a part of the flow of the South Platte River to be delivered by Colorado at the Interstate Station in compliance with Article IV of this compact, provided, however, that such runs of stored water shall be made in amounts of not less than ten cubic feet per second of time and for periods of not less than twenty-four hours.

"Article IV.

"The waters of the South Platte River hereafter shall be divided and apportioned between the signatory States as follows:

"1. At all times between the fifteenth day of October of any year and the first day of April of the next succeeding year, Colorado shall have the full and uninterrupted use and benefit of the waters of the river flowing within the boundaries of the State, except as otherwise provided by Article VI.

"2. Between the first day of April and the fifteenth day of October of each year, Colorado shall not permit diversions from the Lower Section of the river, to supply Colorado appropriations having adjudicated dates of priority subsequent to the fourteenth day of June, 1897, to an extent that will diminish the flow of the river at the Interstate Station, on any day, below a mean flow of 120 cubic feet of water per second of time, except as limited in paragraph three (3) of this Article.

"3. Nebraska shall not be entitled to receive and Colorado shall not be required to deliver, on any day, any part of the flow of the river to pass the Interstate Station, as provided by paragraph two (2) of this Article, not then necessary for beneficial use by those entitled to divert water from said river within Nebraska.

"4. The flow of the river at the Interstate Station shall be used by Nebraska to supply the needs of present perfected rights to the use of water from the river within said State before permitting diversions from the river by other claimants.

"5. It is recognized that variable climatic conditions, the regulation and administration of the stream in Colorado, and other causes, will produce diurnal and other unavoidable variations and fluctuations in the flow of the river at the Interstate Station, and it is agreed that, in the performance of the provisions of said paragraph two (2), minor or compensating irregularities and fluctuations in the flow at the Interstate Station shall be permitted; but where any deficiency of the mean daily flow at the Interstate Station may have been occasioned by neglect, error or failure in the performance of duty by the Colorado water officials having charge of the administration of diversions from the Lower Section of the river in that state, each such deficiency shall be made up, within the next succeeding period of seventy-two hours, by delivery of additional flow at the Interstate Station, over and above the amount specified in paragraph two (2) of this Article, sufficient to compensate for such deficiency.

"6. Reductions in diversions from the Lower Section of the river, necessary to the performance of paragraph two (2) of this Article by Colorado, shall not impair the rights of appropriators in Colorado (not to include the proposed Nebraska canal described in Article VI), whose supply has been so reduced, to demand and receive equivalent amounts of water from other parts of the stream in that State according to its Constitution, laws, and the decisions of its courts.

"7. Subject to compliance with the provisions of this Article, Colorado shall have and enjoy the otherwise full and uninterrupted use and benefit of the waters of the

river which hereafter may flow within the boundaries of that State from the first day of April to the fifteenth day of October in each year, but Nebraska shall be permitted to divert, under and subject to the provisions and conditions of Article VI, any surplus waters which otherwise would flow past the Interstate Station.

"Article V.

"1. Colorado shall have the right to maintain, operate, and extend, within Nebraska, the Peterson Canal and other canals of the Julesburg Irrigation District which now are or may hereafter be used for the carriage of water from the South Platte River for the irrigation of lands in both states, and Colorado shall continue to exercise control and jurisdiction of said canals and the carriage and delivery of water thereby. This Article shall not excuse Nebraska water users from making reports to Nebraska officials in compliance with the Nebraska laws.

"2. Colorado waives any objection to the delivery of water for irrigation of lands in Nebraska by the canals mentioned in paragraph one (1) of this Article, and agrees that all interests in said canals and the use of waters carried thereby, now or hereafter acquired by owners of lands in Nebraska, shall be afforded the same recognition and protection as are the interests of similar land owners served by said canals within Colorado; *Provided, However,* that Colorado reserves to those in control of said canals the right to enforce the collection of charges or assessments, hereafter levied or made against such interest of owners of the lands in Nebraska, by withholding the delivery of water until the payment of such charges or assessments; Provided, however, such charges or assessments shall be the same as those levied against similar interests of owners of lands in Colorado.

"3. Nebraska grants to Colorado the right to acquire by purchase, prescription, or the exercise of eminent domain, such rights of way, easements or lands as may be necessary for the construction, maintenance, operation, and protection of those parts of the above mentioned canals which now or hereafter may extend into Nebraska.

"Article VI.

"It is the desire of Nebraska to permit its citizens to cause a canal to be constructed and operated for the diversion of water from the South Platte River within Colorado for irrigation of lands in Nebraska; that said canal may commence on the south bank of said river at a point southwesterly from the town of Ovid, Colorado, and may run thence easterly through Colorado along or near the line of survey of the formerly proposed 'Perkins County Canal' (sometimes known as the 'South Divide Canal') and into Nebraska, and that said project shall be permitted to divert waters of the river as hereinafter provided. With respect to such proposed canal it is agreed:

"1. Colorado consents that Nebraska and its citizens may hereafter construct, maintain, and operate such a canal and thereby may divert water from the South Platte River within Colorado for use in Nebraska, in the manner and at the time in this Article provided, and grants to Nebraska and its citizens the right to acquire by purchase, prescription, or the exercise of eminent domain such rights of way, easements or lands as may be necessary for the construction, maintenance, and operation of said canal; *subject, however,* to the reservations and limitations and upon the conditions expressed in this Article which are and shall be limitations upon and reservations and conditions running with the rights and privileges hereby granted, and which shall be expressed in all permits issued by Nebraska with respect to said canal.

"2. The net future flow of the Lower Section of the South Platte River, which may remain after supplying all present and future appropriations from the Upper Section, and after supplying all appropriations from the Lower Section perfected prior to the seventeenth day of December, 1921, and after supplying the additional future appropriations in the Lower Section for the benefit of which a prior and preferred use of thirty-five thousand acre feet of water is reserved by subparagraph (a) of this Article, may be diverted by said canal between the fifteenth day of October of any year and the first day of April of the next succeeding year subject to the following reservations, limitations and conditions:

"(a). In addition to the water now diverted from the Lower Section of the river by present perfected appropriations, Colorado hereby reserves the prior, preferred and superior right to store, use and to have in storage in readiness for use on and after the first day of April in each year, an aggregate of thirty-five thousand acre feet of water to be diverted from the flow of the river in the Lower Section between the fifteenth day of October of each year and the first day of April of the next succeeding year, without regard to the manner or time of making such future uses, and diversions of water by said Nebraska canal shall in no manner impair or interfere with the exercise by Colorado of the right of future use of the water hereby reserved.

"(b). Subject at all times to the reservation made by subparagraph (a) and to the other provisions of this Article, said proposed canal shall be entitled to divert five hundred cubic feet of water per second of time from the flow of the river in the Lower Sections, as of priority of appropriation of date December 17, 1921, only between the fifteenth day of October of any year and the first day of April of the next succeeding year upon the express condition that the right to so divert water is and shall be limited exclusively to said annual period and shall not constitute the basis for any claim to water necessary to supply all present and future appropriations in the Upper Section or present appropriations in the Lower Section and those hereafter to be made therein as provided in subparagraph (a).

"3. Neither this compact nor the construction and operation of such a canal nor the diversion, carriage and application of water thereby shall vest in Nebraska, or in those in charge or control of said canal or in the users of water therefrom, any prior, preferred or superior servitude upon or claim or right to the use of any water of the South Platte River in Colorado from the first day of April to the fifteenth day of October of any year or against any present or future appropriator or *use* of water from said river in Colorado during said period of every year, and Nebraska specifically waives any such claims and agrees that the same shall never be made or asserted. Any surplus waters of the river, which otherwise would flow past the Interstate Station during such period of any year

after supplying all present and future diversions by Colorado, may be diverted by such a canal, subject to the other provisions and conditions of this Article.

"4. Diversion of water by said canal shall not diminish the flow necessary to pass the Interstate Station to satisfy superior claims of users of water from the river in Nebraska.

"5. No appropriations of water from the South Platte River by any other canal within Colorado shall be transferred to said canal or be claimed or asserted for diversion and carriage for use on lands in Nebraska.

"6. Nebraska shall have the right to regulate diversions of water by said canal for the purposes of protecting other diversions from the South Platte River within Nebraska and of avoiding violations of the provisions of Article IV; but Colorado reserves the right at all times to regulate and control the diversions by said canal to the extent necessary for the protection of all appropriations and diversions within Colorado or necessary to maintain the flow at the Interstate Stations as provided by Article IV of this compact.

"Article VII.

"Nebraska agrees that compliance by Colorado with the provisions of this compact and the delivery of water in accordance with its terms shall relieve Colorado from any further or additional demand or claim by Nebraska upon the waters of the South Platte River within Colorado.

"Article VIII.

"Whenever any official of either State is designated herein to perform any duty under this compact, such designation shall be interpreted to include the state official or officials upon whom the duties now performed by such official may hereafter devolve, and it shall be the duty of the officials of the State of Colorado charged with the duty of the distribution of the waters of the South Platte River for irrigation purposes, to make such deliveries of water at the Interstate Station in compliance with this compact without necessity of enactment of special statutes for such purposes by the General Assembly of the State of Colorado.

"Article IX.

"The physical and other conditions peculiar to the South Platte River and to the territory drained and served thereby constitute the basis for this compact and neither of the signatory States hereby concedes the establishment of any general principle or precedent with respect to other interstate streams.

"Article X.

"This compact may be modified or terminated at any time by mutual consent of the signatory States, but, if so terminated and Nebraska or its citizens shall seek to enforce any claims of vested rights in the waters of the South Platte River, the statutes of limitation shall not run in favor of Colorado or its citizens with reference to claims of the Western Irrigation District to the water of the South Platte River from the sixteenth day of April, 1916, and as to all other present claims from the date of the approval of this compact to the date of such termination, and the State of Colorado and its citizens who may be made defendants in any action brought for such purpose shall not be permitted to plead the statutes of limitation for such period of time.

"Article XI.

"This compact shall become operative when approved by the Legislature of each of the signatory States and by the Congress of the United States. Notice of approval by the Legislature shall be given by the Governor of each State to the Governor of the other State and to the President of the United States, and the President of the United States is requested to give notice to the governor of the signatory States of the approval by the Congress of the United States.

"IN WITNESS WHEREOF, the Commissioners have signed this compact in duplicate originals, one of which shall be deposited with the Secretary of State of each of the signatory States.

"Done at Lincoln, in the State of Nebraska, this 27th day of April, in the year of our Lord One Thousand Nine Hundred and Twenty-three.

DELPH E. CARPENTER,
ROBERT H. WILLIS."

PROOF OF SERVICE BY MAILING COPIES OF ANSWER.

STATE OF COLORADO,
CITY AND COUNTY OF DENVER } ss.

Before me the undersigned Notary Public, personally appeared Walter F. Scherer of lawful age, who being first duly sworn upon oath deposes and says, that on April 30th, A. D. 1936, he deposited in the United States Post Office of the City of Denver, Colorado, in a sealed envelope, with registered mail postage fully prepaid, a true printed copy of the foregoing Answer and Cross Bill of the impleaded defendant, the State of Colorado, addressed to Honorable Wm. H. Wright, Attorney General of Nebraska, and Solicitor for the State of Nebraska, State Capitol, Lincoln, Nebraska, and that at the same time and in the same manner he also mailed a true printed copy of said Answer and Cross Bill to the Honorable Ray E. Lee, Attorney General of Wyoming and Solicitor of Defendant, the State of Wyoming.

WALTER F. SCHERER.

Subscribed and sworn to before me this 30th day of April, A. D. 1936.

My commission expires August 7, 1938.

ELIZABETH D. PATTEN,
(Notarial Seal) Notary Public.

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